

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Norman Epstein, Chair
Joshua Weinstein, Attorney, 415-865-7688

DATE: March 30, 2000

SUBJECT: Defendant's Statement of Assets (adopt Form CR-115)

Issue Statement

In Senate Bill 1768 (Kopp), (Stats. 1998, ch. 587, §§ 6, 6.5), the Legislature amended Penal Code section 1202.4 to require a convicted criminal defendant to file a financial statement to assist crime victims in collecting restitution. To that end, the Judicial Council is to create a form interrogatory for the convicted criminal defendant to file with the court "for the purposes of facilitating the disclosure." (Pen. Code, § 1202.4(f)(4).) In the financial statement, the defendant must disclose "all assets, income, and liabilities" in the defendant's control at the time of his or her arrest. (*Ibid.*) If the defendant "unreasonabl[y] fail[s] to make a complete disclosure," the court may consider that failure in selecting the sentence. (Pen. Code, § 1202.4(f)(8).) The proposed form is designed to comply with Penal Code section 1202.4(f)(4). It is designed to reflect the defendant's present financial situation as well as that at the time of his or her arrest.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council adopt, effective July 1, 2000, Form CR-115, *Defendant's Statement of Assets*.

Rationale for Recommendation

The form is required by newly amended Penal Code section 1202.4.

Alternative Actions Considered

Not applicable.

Comments from Interested Parties

The form was out for public comment in the winter circulation. Thirteen responses were received. Eight of the respondents agreed with the proposal. Two agreed if the

proposal was modified. Three did not state a position. No respondents disagreed with the proposal.

The committee accepted several of the suggestions it received after the form was circulated for comment. One commentator suggested that the assets section should have an area where the defendant can list stocks, bonds, and other securities. The committee agreed. Another suggestion was to exclude confidential information such as the social security number; however, the form is confidential under Penal Code section 1203.05. Another commentator suggested that the form include the home and work phone numbers, the name of a relative or friend, and a waiver to allow the court to contact the defendant's employer, bank, etc. The committee agreed to incorporate the first two suggestions but declined to implement the latter two. The relative or friend did not seem relevant to a form regarding a statement of assets, and the victim, not the court, would be enforcing the judgment. There was also a suggestion to add a field to list the number of dependents, but the committee decided not to include this, as the form is a statement of assets, not a complete financial statement. Other, minor suggestions were made and are summarized in the attached table.

Implementation Requirements and Costs

Implementation will require a change in procedure and will add the costs of copying the forms. However, the Legislature has allowed for courts to apply to the Judicial Council for extensions of time in implementing the form. Thus far, seven courts have requested extensions, all of which have been granted by the Executive and Planning Committee.

The text of the proposed form is attached at pages 3-4.

GUIDELINES FOR WRITING COUNCIL REPORT TITLES

Council report titles should succinctly state the subject matter and council action required, if any. Report titles are duplicated on Form Zs and on council business meeting agendas (distributed to press and members of the public). The library also uses report titles to catalogue items considered by the council; therefore, comprehensive and clear language is essential.

1. The title should briefly and concisely state what the report describes.
2. If the report involves rules, forms, or standards, necessary action should be noted *in* the parentheses along with the number of the affected rule, form, or standard.

Samples:

- New Budget Process (Action Required);
- Guidelines for Drug Court Grants (Action Required);
- Rules on the Judicial Council, Its Internal and Advisory Committees, and on the Administrative Office of the Courts (adopt rules 6.1–6.90; repeal rules 1001–1026 and 1029–1072; and renumber rules 2301, 2501, 2520, and 2530 of the California Rules of Court) (Action Required)

3. The following verbs should be used to describe action related to rules, forms, and standards:
 - Adopt rules or standards
 - Adopt forms [“adopt” = mandatory forms]
 - Approve forms [“approve” = optional forms]
 - Repeal rules or standards
 - Revise forms
 - Revoke forms
 - Amend rules or standards
 - Renumber rules, forms, or standards
4. There is no requirement to list the names of forms in the title unless use of the name most succinctly conveys the subject of the report. Do list form *numbers* in parentheses with the action required.
5. Do not use the term “proposed” in the titled. All agenda items are proposed.
6. State the subject matter of a rule, form, or standard in a title rather than the number unless the rule, form, or standard number is how the people commonly refer to the issue. If the rule number is used in the title also note its general subject matter.

Comments for
Defendant's Statement of Assets (Form CR-115)

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
1.	Laurel Lindenbaum Judge Superior Court of Contra Costa County	A			
2.	Phrasel L. Shelton Rules Committee Chair Superior Court of San Mateo County	A			
3.	Jack Komar Presiding Judge Superior Court of Santa Clara County	A		1. There should be a separate "assets" section for stocks, bonds, mutual funds, and other securities. 2. There should be disclosure for assets held in trust, whether in the name of the defendant as trustee or in the name of another.	1. Agree. 2. Already contained in comment #13.
4.	Mark Lomax Management Analyst Superior Court of Alameda County	AM		1. The form is adequate but is not very user-friendly for in-custody criminal defendants. 2. Form requests information protected under the Privacy Act, such as social security number.	The form is confidential under Penal Code section 1203.05.
5.	Leslye Kasoff Program Analyst Los Angeles Superior Court	A	Y		
6.	Joanne Nowak Assistant Executive Officer Superior Court of San Diego County		Y	Suggest adding: (1) home phone number; (2) employer's phone number; (3) name, address, etc., of nearest relative or friend; and (4) waiver to allow court or agent to contact employer, bank, and creditors.	Agree that home phone number and employer's phone number should be added. The other two do not seem necessary.
7.	Clif Taylor Assistant Public Defender Alameda County Public Defender's Office	AM		Penal Code section 1202.4 does not require that disclosure be signed under penalty of perjury, and that section should therefore be deleted.	Agree. Penalty of perjury was deleted in deference to legislative determination that willful false statements in a form should be punished as a misdemeanor.

8.	Martha Wilson Director, Criminal-Traffic Superior Court of Santa Clara County			Add “number of dependents” for better idea of monthly expenses.	Disagree. Form is statement of assets for collection of judgment, not a complete financial statement.
9.	Richard Oliver Attorney San Joaquin County Bar Association	A	Y		
10.	Sharol H. Strickland Court Executive Officer Superior Court of Butte County	A		Include defendant’s telephone number and e-mail address.	Agree on telephone number, but e-mail address does not seem necessary.
11.	Tessie T. Bigornia Manager-Collections Superior Court of Ventura County	A		Form will assist in enforcing collection of restitution.	
12.	Linda Weaver Court Program Manager Superior Court of Ventura County	A		Is there a way to get an updated version after six months or a year?	Penal Code section 1202.4 requires the form only at sentencing.
13.	Vernon Nakahara Judge Superior Court of Alameda County			Form should also have: 1. Marital status 2. Attached pay stubs 3. Other sources of income	First and third suggestion seems appropriate. Attaching pay stubs would delay entry of form for in-custody cases.